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No. 464 1

In the

Supreme Court of the United States

OCTOBER TERM, 1965

LLOYD A. FRY ROOFING COMPANY,

Petitioner,

vs.

VOLASCO PRODUCTS COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The Scheffer Press, Inc.—ANdover 3-6850

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above case on June 11, 1965. The judgment sought to be reviewed affirmed a judgment and injunction entered against petitioner by the United States District Court for the Eastern District of Tennessee, Northern Division.

OPINIONS BELOW

The District Court rendered no opinion. The Opinion of the Court of Appeals is not yet officially reported. This Opinion is reproduced in Appendix A, *infra*, pp. 1a-9a.

JURISDICTION

The judgment of the Court of Appeals was made and entered on June 11, 1965. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

QUESTION PRESENTED

In a primary line geographic price discrimination case wherein some thirteen manufacturers compete in marketing the product involved in the low-priced area, can there be an evidentiary void concerning the general state of competition and the plaintiff satisfy its burden of proving that competition has been or may be injured by showing its own decline in sales and profits? Restated as an abstract proposition of law, this question becomes: Does the injury to competition requirement of Section 2(a) of the Amended Clayton Act mean injury to a single competitor or injury to the state of competition in the marketplace?

STATUTE INVOLVED

The statutory provision involved is Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. 13(a), reproduced in Appendix B, *infra*, pp. 10a.

STATEMENT OF THE CASE

This is a private antitrust action in which respondent, Volasco Products Company (herein sometimes called "Volasco"), alleged that petitioner, Lloyd A. Fry Roofing Company (herein sometimes called "Fry"), had monopolized trade, attempted to monopolize trade, and had conspired to fix prices in restraint of trade, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2, and discriminated in price in violation of Section 2(a) of the amended Clayton Act, 15 U.S.C. 13(a). The

trial court took the issues of monopolization and attempted monopolization from the jury. The jury returned a verdict of not guilty with regard to the Sherman Act conspiracy charge, but found petitioner guilty of price discrimination, assessed damages in the amount of $25,000 which was trebled, and judgment, including $50,000 for attorneys' fees, was awarded to Volasco in the sum of $125,000. The trial court also entered a permanent injunction against petitioner. On appeal the judgment and injunction were affirmed.

Respondent Volasco is situated in Knoxville, Tennessee. In October, 1955, approximately two and a half years before filing its suit, it began manufacturing and selling felt* in the Knoxville area, an area aptly described by the Court of Appeals as a "highly competitive market". Competing in this market both before and after Volasco entered the business were thirteen or more manufacturers including such publicly-held multi-plant companies as Johns-Manville Corporation, Certain-teed Products Corporation, the Flintkote Company, Allied Chemical Corporation (Barrett brand), Ruberoid Company, and Celotex Company, as well as Philip Carey Manufacturing Company, Bird & Son, Logan-Long Company, and others (141-145a; 759a; 808a-809a).**

During the period in question the price of asphalt saturated felt was unstable. Within this two and a half

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* Asphalt saturated felt, frequently referred to simply as "felt" or "asphalt felt", the only product involved in this case, resembles tar paper and is composed of two ingredients, absorbent dry felt and asphalt (saturant). It may be used on roofs, on the sides of houses as insulation, and for other purposes.

** References followed by small "a" refer to the certified copy of the printed record used in the Court of Appeals.